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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,844	03/28/2001	Rainer Nolvak	36791.00000	1566
27171	7590	12/28/2005		
MILBANK, TWEED, HADLEY & MCCLOY 1 CHASE MANHATTAN PLAZA NEW YORK, NY 10005-1413			EXAMINER MORGAN, ROBERT W	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/819,844

Applicant(s)

NOLVAK ET AL.

Examiner

Robert W. Morgan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Notice to Applicant

1. In the amendment filed 10/12/05, the following has occurred: 1, 3, 10 and 12 have been amended and claim 9 has been canceled. Now claims 1-8 and 10-17 are presented for examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8 and 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,409,661 to Murphy and U.S. Patent No. 6,073,046 to Patel et al., for substantially the same reasons given in the previous Office Action (see paper dated 3/31/05) in view of U.S. Patent No. 5,906,583 to Rogel. Further reasons appear below.

(A) Claims 2, 4-9, 11 and 13-17 have not been amended, and are rejected for the same reasons given in the previous Office Action (see paper dated 3/31/05), and incorporated herein. Further reasons appear hereinbelow.

(B) Claims 1 and 10, has been amended to now recite “using a remotely located data collection device, prompting a remotely located patient to place a plurality of electrodes connected to said data collection device in predetermined locations on the patient's body”, and “instructions directing placement by the patient of a plurality of electrodes connected to the data collection device in predetermined locations on the patient's body”.

As per this limitation, Murphy and Patel et al. teach an automatic display of instructions on how to put on the blood pressure monitor, and the pulse oximeter as well as instructions for attaching the sensors 1 to 4 especially the ECG sensor array to specific locations of the body (see: Murphy: column 8, lines 21-32).

Murphy and Patel et al. fail to explicitly teach prompting a remotely located patient to place a plurality of electrodes on the patient body and placement by the patient a plurality of electrodes on the patient's body.

Rogel teaches a device and method for user's ECG self-monitoring and real time analysis where different users may use the self-monitoring device such as different family members (see: column 5, lines 3-5). In addition, Rogel teaches an instruction panel (24, Fig. 2) and a display unit (20, Fig. 2) that instructs the user to attach sensors to his body (see: column 5, lines 6-23).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the self-monitoring device that allows patients to attach sensors to their bodies as taught by Rogel with the system as taught by the Murphy and Patel et al. with the motivation of providing a simple and reliable device that provides immediate and convenient service to user enabling them to make right decision at critical moments in their lives (see: Rogel: column 1, lines 24-32).

(C) As per claims 3 and 12, Murphy teaches the claimed plurality of electrodes comprises only three electrodes is met by the diagnostic apparatus comprising a plurality of medical sensors including a ECG sensor array (1, Fig. 1), which is usually a standard 12 lead array but could be a 4 lead array or be any other suitable array (see: column 4, lines 41-45 and column 8, lines 30-

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32). The Examiner considers any other suitable array to include an array of electrodes comprising only three electrodes.

Response to Arguments

4. Applicant's arguments filed 10/12/05 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 10/12/05.

(A) In the remarks the Applicant argues in substance that, (1) Murphy is silent on the role of the patient operating the apparatus; (2) Murphy fails to teach a plurality of electrodes that comprises only three electrodes as recited in claim 3; and (3) Murphy does not teach a plurality of electrodes in predetermined locations on the surface of the hand-held device as recited in claim 4.

(B) In response to Applicant arguments that, (1) Murphy is silent on the role of the patient operating the apparatus. The Examiner respectfully submits that the Rogel reference is now relied for the amended feature of "a patient operating the apparatus" in particular, the instruction panel (24, Fig. 2) and display unit (20, Fig. 2) that instructs the user on how to attach sensors to his body (see: column 5, lines 6-23).

(C) In response to Applicant arguments that, (2) Murphy fails to teach a plurality of electrodes that comprises only three electrodes as recited in claim 3. The Examiner respectfully submit the Murphy reference teaches a diagnostic apparatus comprising a plurality of medical sensors including a ECG sensor array (1, Fig. 1), which is usually a standard 12 lead array but could be a 4 lead array or be any other suitable array (see: column 4, lines 41-45 and column 8,

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lines 30-32). The Examiner considers any other suitable array to include an array of electrodes comprising only three electrodes.

(D) In response to Applicant arguments that, (3) Murphy does not teach a plurality of electrodes in predetermined locations on the surface of the hand-held device as recited in claim 4. The Examiner respectfully submits Murphy teaches a diagnostic apparatus comprising an ECG sensor array (1, Fig. 1), which is usually a standard 12, lead array or electrodes (see: column 4, lines 41-45 and column 8, lines 30-32). In addition, Murphy teaches that the apparatus is portable housed in container (see: column 2, lines 24-26). The Examiner considers the diagnostic apparatus that includes ECG sensor array to be a portable hand-held device with a plurality of electrodes connected to diagnostic apparatus. In addition, Murphy teaches instructions for attaching the sensors 1 to 4 especially the ECG sensor array to specific locations of the body (see: Murphy: column 8, lines 21-32). This clearly indicates that the diagnostic apparatus described by Murphy includes is a hand-held device with a plurality of electrodes connected to the device.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

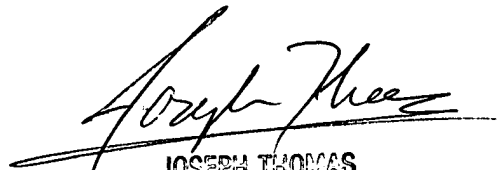
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Morgan whose telephone number is (571) 272-6773.

The examiner can normally be reached on 8:30 a.m. - 5:00 p.m. Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571) 272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RWM
Robert Morgan
Patent Examiner
Art Unit 3626


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600